

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002138

FILED: _____

STATE OF ARIZONA

ROY E HORTON

v.

STEVEN J BANDUSKY

STEVEN J BANDUSKY
PO BOX 20671
MESA AZ 85277-0000

MESA CITY COURT
REMAND DESK CR-CCC
HONORABLE WALTER SWITZER
MESA CITY COURT
245 W SECOND STREET
MESA AZ 85201-6599

MINUTE ENTRY

Mesa City Court

Cit. No. #2000023499

Charge: INTERFERING WITH JUDICIAL PROCEEDINGS

DOB: 05/10/59

DOC: 04/01/00

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002138

Appellant was charged by long form complaint with a violation of A.R.S 13-2810(A)(2), Interference with Judicial Proceedings, a class 1 misdemeanor. The Defendant was convicted after a bench trial on November 3, 2000. The trial judge, the Honorable Walter Switzer, suspended sentence for 36 months and placed Appellant on unsupervised probation. The trial court ordered a fine of \$885.00 as a term and condition of probation, Domestic Violence/Anger Control counseling, that Appellant "not harm, threaten, harass or assault Sylvia Bandusky", and that Appellant not possess or consume any alcohol at any time. The trial court did not impose a term of incarceration in the Maricopa County Jail as a term and condition of probation. The Defendant filed a timely Notice of Appeal and has cited several reasons in support of his request that he be granted a new trial.

This Court has reviewed the record, the transcript, both parties memoranda and relevant authorities.

The first issue raised by the Appellant is that he was denied his right of counsel. Though not specifically stated by the Appellant, this Court understands the Defendant's claim to be a denial of his alleged right to appointed counsel. The record is devoid of any evidence that the Appellant is indigent. Arizona Rules of Criminal Procedure, Rule 6.1(b) provides:

An indigent Defendant shall be entitled to have an attorney appointed to represent him or her in any criminal proceeding which may result in punishment by loss of liberty and in any other criminal proceeding in which the Court concludes that the interest of justice so require."

The law at the federal level is clear. The United State's Supreme Court in Scott v Illinois, 440 U.S. 367, 99 S.Ct. 1158, 59L.Ed.2d 383(1979), held that an indigent Defendant charged with shoplifting was not entitled to appointed counsel even though the possible sentencing range was up to one year imprisonment, but imprisonment was not imposed. There are no

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002138

authorities holding that Arizona has standards which exceed the federal standards regarding appointment of counsel. Campa v Fleming, 134 Ariz. 330, 656 P.2d 619(App.1982).

In Campa v Fleming, supra., Division 2 of the Arizona Court of Appeals held that the Defendant was not entitled to a court appointed attorney where the Defendant was charged with Shoplifting, a class 1 misdemeanor offense, but the prosecutor avowed that no jail time would be requested, and the City Court judge ruled that no jail time would be imposed.

In the instant case, Appellant was not sentenced to any jail time. Appellant was placed on probation. Therefore, Appellant is not entitled to a court appointed attorney and the trial court did not error in refusing his request.

Appellant next claims that he was denied a "necessity defense". Appellant filed a Motion to Dismiss citing the necessity defense. This motion was denied and the trial court stated it was an issue for trial. Appellant presented evidence of necessity and the trial court rejected that necessity defense as a finder of fact. Appellant's defense was not precluded by the trial court contrary to his claims. This Court finds no error.

Appellant also claims that he was denied his right to a trial by jury. Appellant argues that the possibility of six (6) months imprisonment and a \$2500.00 fine renders the offense serious and not "petty". This appears to be a case of first impression involving A.R.S. 13-2810. This Court was unable to discover any reported cases in Arizona dealing with the issue of a right to jury trial to persons charged with Interfering with Judicial Proceedings.

The Federal law is not helpful in regard to this issue. The United States Constitution requires that if a crime is punishable by more than six (6) months of incarceration, it is not a petty offense and the accused must be afforded the right

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002138

to a jury trial. Lewis v United States, 518 U.S. 322, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); Blanton v North Las Vegas, 489 US 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989). Arizona has, in fact, extended the right of a jury trial much further than guaranteed by the United States Constitution. State ex rel. McDougall v Strohson, 190 Ariz. 120, 945 P.2d 1251 (1997). The Arizona Supreme Court in McDougall, id., listed four factors to evaluate in determining the right to a jury trial in the State of Arizona. The first three factors are found in Rothweiler v Superior Court, 100 Ariz. 37, 410 P.2d 479 (1966):

1. The length of possible incarceration;
2. The moral quality of the act charged (sometimes referred to as the "moral turpitude" issue);
3. Its relationship to common law crimes.

The fourth consideration comes from State ex rel. Dean v Dolny, 161 Ariz. 297, 778 P.2d 1193 (1989) and requires that the Court evaluate whether additional serious or grave consequences might flow from the conviction.

The length of possible incarceration in this case is six (6) months imprisonment; the maximum possible sentence for all class 1 misdemeanors. This factor is not controlling as Defendants charged for other class 1 misdemeanors such as assault or disorderly conduct are not entitled to trials by jury. Goldman v Kautz, 111 Ariz. 431, 531 P.2d 1138 (1975); Bruce v State, 126 Ariz. 271, 614 P.2d 813 (1980); O'Neill v Mangum, 103 Ariz. 484, 445 P.2d 843 (1968).

An evaluation of the moral quality of the act charged requires this Court to consider those facts which established Appellant's conviction. Appellant violated a Domestic Violence Order of Protection. Appellant was not charged with a crime involving dishonesty or fraud or any other type of crime involving a deficient moral character. This Court concludes the crime is not of such a moral quality that a jury trial would be required.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002138

In considering the relationship of the crime, Interfering with Judicial Proceedings to common law crimes, this Court notes the similarity of the crime charged to criminal contempt. A.R.S. 13-2810 is, however, a separate crime from criminal contempt. This offense of Interfering with Judicial Proceedings had no common law antecedents.

Finally, this Court concludes that there are no sufficiently grave collateral consequences of a conviction of the crime of Interfering with Judicial Proceedings that would entitle Appellant to a jury trial.

This Court, therefore, concludes that the trial court correctly denied Appellant's request for a jury trial in this case.

Additionally, the Appellant has raised two other issues concerning intent and "Prohibition of Bills of Attainder". The Court has read Appellant's memorandum and finds no merit whatsoever to these claims.

IT IS THEREFORE ORDERED rejecting the relief requested by the Appellant and affirming the decisions, judgment of guilt and sentence of the trial court for all of the reasons stated in this opinion.